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VIRGINIA LAW REGISTER

R. T. W. DUKE, JR., EDITOR.

A. R. MICHIE AND FRANK MOORE, ASSOCIATE EDITORS.

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I have agreed with the publishers of the VIRGINIA LAW REGISTER to take charge of that periodical as editor in chief. The history of law periodicals in Virginia is one which may well produce some feeling of anxiety on the part of an **Salutatory.** editor who succeeds men like the elder and younger Burks, Graves, Lile, and the younger editors, Bryan and Pollard, who have kept the standard of legal literature in the State of Virginia at such a high mark. As one busily engaged in the active practise of the profession, I should have for a long time hesitated before undertaking this work if I had not known that in it I should have the assistance of the able corps of law writers who have now for some years been engaged by The Michie Company in their work of annotating the State, Railway and Corporation Reports. The work which they have done, especially in the State of Virginia, in the Annotated Virginia Reports, is of a value to the profession of which it is hard to speak in sufficiently high terms. With their aid, and that of my brethren of the Bar, I trust that I may succeed somewhat in paying the debt that I am deeply conscious I have long owed to the profession, and paid but poorly. I shall, therefore, do my best to make the VIRGINIA LAW REGISTER not only useful, but I trust entertaining to the bench and bar; and in order to accomplish that object, I earnestly hope that I may have the aid of the members of the profession in the two States of Virginia and West Virginia. Not only will suggestions as to the conduct of the magazine be welcome, but articles either upon general subjects of interest to the profession and comments upon cases in the courts of last resort or at *nisi prius* will be given place in the REGISTER. The editor, therefore, earnestly hopes that the REGISTER may be made a means of the exchange of thought amongst the lawyers of this and the adjoining states, and that the rulings of the courts may be respectfully but fear-

lessly criticized, if need be, by those to whom their decisions are of the gravest interest.

It is trusted also that the REGISTER may be made a vehicle of conveying some personal information amongst the lawyers of the states, and items upon subjects which relate to changes in, or additions to, any of the local bars will be given a proper place in the periodical.

R. T. W. DUKE, JR.

The jury system is the subject of an interesting address by S. M. Bruce, of Washington State, reprinted in the American Law Review. Mr. Bruce claims that in opening this time-worn subject there would be no attempt on his part to laud

The Jury or censure, but in the main the speech was a vigorous attack on the famous Anglo-Saxon institution.

System. In fact Mr. Bruce intimates that already the power of the jury has been so limited by encroachments of equity and the judiciary as to amount to a partial abolition of the system.

"Despite all advocacy the student of events cannot overlook the constant lessening of faith in, and influence of the jury in business adjustments. Equity has taken the business and the confidence of mankind unto itself, leaving the jury system the cold comfort of giving advice on crimes and civil subjects based essentially on the law of retaliation. When we consider present conditions, and analyze the essentials of a closely tried law suit, we find the jury little more than advisory to the judges—a medium by which the judge is relieved of the disagreeableness of saying to one set of men: 'I do not believe what you say about this matter; I believe your adversary.' This, in plain English, is where we stand to-day. The judge determines what persons are competent to testify, admits or excludes testimony as it is offered, cautions the jury to what purpose evidence shall be considered, what witnesses must be corroborated, what of each may be disregarded as stricken or not corroborated, what would justify the findings of notice or want of ordinary care, and so on; sends the twelve to consider which side of a conflicting tale is to be believed, and when ascertained becomes the recipient of judicial favor. The jury is alert to discover the judge's opinion,

with which jurors are ever anxious to agree, because throughout all this formality he distinctly insinuates between pauses that if what may be done by the jury fails to meet his approval, the verdict will be set aside and a new trial granted. Now to a people not 'to the manner born,' that has all the characteristics of a huge practical joke. If the Anglo-Saxon did not take himself more seriously than other nationalities do, he would know it was a joke—a most extravagant joke in the category of public affairs. Take the influence of the dry, dead past, of precedent and ancestor worship out of the institution, and practical America would not furnish the jury system a night's lodging."

There are many members of the Virginia bar, we believe, who would gladly welcome further reforms in the jury system of the Commonwealth. As for instance the making a majority sufficient to arrive at a verdict in civil cases. But it will be many generations before the power of the twelve good men and true is taken from them in cases where the life and liberty of citizens are involved.

An interesting phase of the session of congress this spring has been the weighty and elaborate discussion by able lawyers in the Senate upon the constitutionality of the railroad rate bill. One of the most noticeable facts appertaining to this discussion has been the widely different views on this subject which have been held not only by members of the Senate, but also by editors of the daily newspapers and members of the bar who have discussed the subject in contributions to current periodicals. It would seem, after this thorough sifting of the question, that when the law finally assumes form, there would be a reasonable certainty of its constitutionality. But when it is recalled that nearly all of the important decisions, on questions of the constitution, by the Supreme Court of the United States have been by a divided court, there remains abundant room for doubt as to the result of the final test before the Supreme Court.